

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

AVIS RENT A CAR SYSTEM, INC. ^{1/}

Employer

and

Case 9-RC-17676

UNITED FOOD & COMMERCIAL WORKERS
UNION, LOCAL 1059, AFL-CIO-CLC ^{2/}

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

The Employer, Avis Rent A Car System, Inc. is engaged in the retail rental of automobiles and other vehicles at numerous locations throughout the United States, including a location at the Columbus, Ohio Airport, the only facility involved in this proceeding. The Petitioner, United Food & Commercial Workers Union, Local 1059, AFL-CIO-CLC, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit comprised of approximately 76 employees in the job classifications of rental sales agents, customer service representatives, service agents and airport ("on-lot") shuttler employees employed at the Employer's Columbus, Ohio facility, excluding all dispatchers, clerical employees, mechanics, utility personnel and off-lot shuttlers. A hearing officer of the Board held a hearing on the issues and the parties filed briefs with me.

At the hearing and in its brief, the Petitioner, contrary to the Employer, maintains that the 2 dispatchers should be excluded from the unit because they are managerial employees and that the 3 mechanics, the 3 utility agents and the 51 "off-lot" shuttlers should be excluded from the unit on the grounds that they do not share a sufficient community of interest with other unit employees to require their inclusion in the unit. The parties agree, the records shows, and I find that the unit should include all regular and part-time and lead employees in the job classifications included in the unit.

^{1/} The Employer's name appears as amended at the hearing.

^{2/} The Petitioner's name appears as amended at the hearing.

I have considered the evidence and the arguments presented by the parties on the disputed issues. I have concluded, for the reasons discussed below, that the “off-lot” shuttlers and the dispatchers must be included in the unit. My conclusion is based on their common supervision, overlap of job functions, frequent contact and functional integration with the other unit employees and my finding that the dispatchers are not managerial employees. I further conclude that the three mechanics and three utility agents possess sufficient interests separate and apart from the other employees and may appropriately comprise a separate unit. Therefore, their inclusion in an overall unit is not required and I will exclude them from the unit found appropriate. Accordingly, I have directed an election in a unit consisting of approximately 129 employees. In directing this election, I note that the Petitioner has not taken any position concerning whether it would proceed to an election in a larger unit if I found that unit to be appropriate. The Petitioner, therefore, may, if it wishes, proceed to an election in the unit that I have found appropriate.

To provide a context for my discussion of the disputed issues, I will first provide an overview of the Employer’s operations. Then, I will present, in detail, the facts and reasons that support each of my conclusions on the issues.

I. AN OVERVIEW OF THE EMPLOYER’S OPERATIONS

The Employer operates a retail car rental business at the Columbus, Ohio Airport. This facility is divided into two areas, referred to in the record as the airport terminal and the compound. In addition to its facilities at the Columbus Airport, the Employer supplies vehicles from its airport facilities to eight franchised agencies located in the Greater Columbus, Ohio area.^{3/} At the airport terminal the Employer occupies an area referred to as the “Quick Turn Around Area” (QTA) where it maintains a glassed-in customer rental counter; the “ready” and “return” areas, which are used for check-ins of vehicles being taken out or returned; and a service area which contains gas pumps, car washes, and cleaning areas, where routine cleaning and service is done in preparation for the next rental.

The compound area is about a mile from the terminal and contains an employee parking area, parking areas for out-of-town cars and new car deliveries, an administrative building, a maintenance and repair facility, and a service island containing car washes and cleaning areas. The agency locations are independently franchised, but the rental cars are supplied by the Employer from its approximate 2,200 vehicle fleet maintained and serviced at its Columbus, Ohio airport facilities.

The Employer maintains a computer system known as the “Wizard” which tracks customer reservation status and contains information pertinent to the location, condition and availability of the Employer’s vehicles. A hand held radio system links the employees with each other as well as the Wizard in tracking the vehicles.

^{3/} The parties do not contend that the employees of these franchised agencies should be included in the unit found appropriate.

II. THE JOB CLASSIFICATIONS

The 14 rental sales agents work behind the customer counters in the airport terminal area where they handle rental transactions directly with the customers who form a queue at the counters for service. The rental sales agents are specially trained to use the Wizard and regularly use its specialized functions when preparing rental contracts.

The 14 customer service representatives handle rental and vehicle transfers for the Employer's "preferred" customers who may bypass the customer counters and go directly from the terminal to the booths where their cars have been preassigned. The customer service representatives meet these customers upon their arrival at the rental areas, check the customers in, check the cars (including recording the mileage and other information which is then retained in the Wizard system), and generally ensure that the cars are ready for rental by the customers.

The 28 service agents are assigned to either the terminal location or the compound, (depending on the demand), and are responsible for cleaning, vacuuming and washing the cars, getting rid of any trash, checking fluid levels and tire pressure, adding windshield solvent and generally readying the vehicles for the next rental. After the service agent completes the preparation, (s)he moves the car to a designated area for pick up by a shuttler and removal to its destination.

The shuttler employees are divided into two sub-groups: "on-lot" shuttlers and "off-lot" shuttlers. All of the shuttlers move cars from place to place. Generally, the airport (on-lot) shuttlers report to the terminal area and are dispatched to wherever they are needed to move vehicles back and forth, either within the terminal or from the terminal to the compound and back. The "off-lot" shuttlers generally report to the compound area and, from there, shuttle vehicles to the off site agencies as well as other airports where the Employer may have cars being returned. "Off-lot" shuttlers are also utilized, if needed, for moving cars within the compound and even to the terminal. From time to time, the "off-lot" shuttlers perform routine cleaning and service work on vehicles which are returned to the compound after the rental.

The two dispatchers are responsible for the compound and terminal areas where they monitor, with the Wizard system, the need for, location and numbers of vehicles and direct the movement of cars to and from the requisite locations. They also regularly communicate with rental sales agents to handle particular customer requirements or requests and "lost and found" situations.

The three mechanics are highly skilled and capable of performing major mechanical repair work such as rebuilding engines and transmissions. They work primarily at the compound but may also be called upon to perform repairs to cars located at the terminal.

The utility agents, one of whom is regularly assigned to work at the terminal as opposed to the compound, assist the mechanics and perform minor repair work on the cars.

III. COMMUNITY OF INTEREST FACTORS

All employees report to work at the compound where they park their private vehicles and clock in at a common timeclock, after which they go to wherever their assigned duties require their presence. Those who work at the terminal may drive rental vehicles to the terminal (as needed) or take a van transport. Employees are very busy renting out cars on Mondays and Tuesdays and employees are very busy with rental returns on Thursdays and Fridays, during which times the numbers of vehicles at the terminal may accumulate and require, not only all shuttlers, but also the service agents, and even, on occasion, the customer service representatives, to shuttle cars between the compound and the terminal.

All employees receive the same Employer's handbook, work under the same work rules, and are hourly paid. All full time employees receive the same benefits, such as holidays and paid vacations; the part-time employees are not eligible to receive these benefits. The wage rate range and/or average per hour for employees are: Mechanics - \$14.20-\$19.50; Utility Agents - \$10.50 - \$12.50; Dispatchers – an average wage rate of \$10.33; Rental Sales Agents – an average wage rate of \$10.29; Customer Service Representatives – an average wage rate of \$10.88; Service Agents - an average wage rate of \$9.69; “On-Lot” Shuttlers – an average wage rate of \$7.82; and “Off-lot” shuttlers – an average wage rate of \$7.77. The Employer issues wearing apparel to all employees, but the designs and requirements of dress depend on one job classification.^{4/}

Employees in all classifications are supervised by the same management/ supervisory officials. From time-to-time employee meetings, by job classification, are held. An employee group, referred to in the record as the EPG, is comprised of an employee from each job classification and meets about once a month to monitor the quality of their work. There is a safety committee which does not have a representative from all classifications but is open to all employees and currently is comprised of a utility agent, an “on-lot” shuttler, a mechanic and a manager. All employees are invited to the same social functions hosted by the Employer.

From time-to-time, as needed, employees move between job classifications. For example, employees have transferred from the classification of “off-lot” shuttler to dispatch, customer service representative, service agent and utility agent classifications. Other employees have gone from dispatch to customer service representative; from rental sales agent to dispatch; and from service agent to dispatch and utility agent classifications. The record further reflects that one employee began his employment as

^{4/} The record reflects that the Employer does not require off-lot shuttlers to wear a uniform.

an “off-lot” shuttler, subsequently moved to an “on-lot” shuttler position, and at the time of the hearing held the position of service agent. Moreover, while he was employed as an “off-lot” shuttler he requested and was granted overtime work assignments as an “on-lot” shuttler.

IV. THE LAW AND ITS APPLICATION

The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or even the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, a union is not required to seek representation in the most comprehensive grouping of employees unless such grouping alone constitutes an appropriate unit. *Bamberger’s Paramus*, 151 NLRB 748 (1965). Additionally, a petitioner’s unit desire is a relevant consideration but not dispositive. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). It is well settled that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. *Overnite Transportation Co.*, 322 NLRB 723 (1996). However, a proposed bargaining unit based on an arbitrary, heterogeneous or artificial group of employees is not appropriate. *Moore Business Forms*, 204 NLRB 522 (1973); *Glossar Bros., Inc.*, 93 NLRB 1383 (1951). In determining whether a particular unit is appropriate, the Board applies a community of interest standard. *Kalamazoo Paper Box Co.*, 136 NLRB 134 (1962).

In determining whether the employees in a proposed unit share a community of interest separate and apart from employees outside the unit, the Board considers certain criteria including wages, hours and benefits, supervision, qualifications, training and skills, job functions, degree of contact, integration of work functions and interchange. *Home Depot USA*, 331 NLRB 1289 (2000).

A. Placement of the “Off-Lot” Shuttlers

The record discloses that the “off-lot” shuttlers, whom the Petitioner would exclude from the unit, share a significant community of interest, interchange and integration of work functions with the “on lot” shuttlers and other petitioned-for employees, which requires their inclusion in the unit. At high traffic periods, all (“on-lot” and “off-lot”) shuttlers will shuttle vehicles back and forth between the terminal and the compound. The shuttlers will sometimes drive the cars through the car wash for the service agents and/or the service agents may sometimes shuttle cars between locations. Although the “on-lot” and “off-lot” shuttlers have their respective lead persons, they are under the same supervision and ultimately report to the same management as the other unit employees. It appears from the record that about half of the work shift for “off-lot” shuttlers is spent shuttling cars to and from agencies and/or other locations away from the site of the facility. However, the remainder of their time is divided between the compound and the airport shuttling and moving cars as needed and/or even performing cleaning and “prep” type work on cars for delivery to agencies.

Since Spring 2002, all new hires in the shuttler classification are placed in a common job classification with the same starting wage rate, and bid for their preferred shifts according to their designated “on-lot” or “off-lot” duties. Although “off-lot” shuttlers tend to be part-time employees, the record discloses that they are regularly scheduled to work certain days and hours every week and that there are also part-time employees among the “on-lot” shuttlers as well as other job classifications in the unit.

The wage range of the “off-lot” shuttlers is less than other classifications but virtually the same as the “on-lot” shuttlers and not significantly lower than the lowest wage rates of the other unit employees. The majority of the “off-lot” shuttlers are apparently at or over retirement age and many are receiving pension and/or other retirement benefits/social security benefits. The part-time “off-lot” shuttlers may enjoy retirement benefits, and may not be wholly economically dependent on their income from the Employer. However, the Board has held that social security annuitants who otherwise share a community of interest with other unit employees are to be included in the same bargaining unit. *Holiday Inns of America, Inc.*, 176 NLRB 939 (1969). As the Board noted in *Holiday Inns*, it cannot be presumed that because employees may be working to supplement a retirement income, their job interests conflict with other employees. Finally, the part-time status of the “off-lot” shuttlers does not alone support their exclusion from the unit. *J. C. Penney Co.*, 328 NLRB 766 (1999).

Based upon the frequent contacts of the “off-lot” shuttlers with the “on-lot” shuttlers, as well as the service agents and other employees included in the unit found appropriate, the high degree of functional integration in the operation of the Employer’s rental car service of which the “off-lot” and “on-lot” shuttlers share an integral part, as well as the interchange between the “off-lot” shuttlers and other classifications, I find that the “off-lot” shuttlers share a substantial community of interest with the other unit employees and, standing alone, would not and could not comprise a separate unit. Accordingly, the “off lot” shuttlers must be included in the unit. Neither case cited by the Petitioner in its brief compels a different conclusion. In *Avis Rent-A-Car System, Inc.*, 280 NLRB 580, the petitioning union already represented the mechanics and an election was held pursuant to a Stipulated Election Agreement, therefore, the issue of community of interest in a “shuttler unit” was not litigated. *Avis Rent-A-Car Systems, Inc.*, 173 NLRB 1368, involved different considerations inasmuch as the issue before the Board was whether the “car transporters” constituted an accretion to an existing unit of service agents. Furthermore, Petitioner’s subjective arguments that the inclusion of the “off-lot” shuttlers would create a “collective bargaining nightmare” and a “dysfunctional bargaining unit,” are not persuasive inasmuch as they do not set forth established criteria upon which to base an exclusion.

Based on the foregoing, the entire record, and having carefully considered the arguments of the parties at the hearing and in their briefs, I will include the “off-lot” shuttlers in the unit found appropriate.

B. Placement of the Dispatchers

The Petitioner contends that the dispatchers should be excluded as managerial employees; however the record is void of any evidence which would establish their managerial status. Managerial employees are defined as employees who formulate and effectuate management policies by expressing and making operative the decisions of their employer and those who have discretion in the performance of their jobs independent of their employer's established policies. *Tops Club, Inc.*, 238 NLRB 928 (1978); *Long Beach Press-Telegram*, 305 NLRB 412, citing *Eugene Register Guard*, 237 NLRB 205 (1978). In its brief, the Petitioner asserts that dispatchers spend 50 percent of their time making "management" decisions on their own. However, the record clearly discloses that the dispatchers' decisions are limited to the movement of cars, utilizing the information programmed into the Wizard, which is not the type or level of discretion and authority to formulate or effectuate employer policies contemplated by the Board in excluding managerial employees.

The record shows that the dispatchers work closely with the shuttlers and the rental sales agents; and like the rental sales agents and lead shuttlers may generate vehicle transfers which is the paperwork for moving cars between locations. They share the same benefits as the other job classifications and are hourly paid at comparable wages. Clearly the dispatchers have a sufficient community of interest with the other petitioned-for employees to be included in the unit and could not appropriately form a separate unit.

Based on the foregoing, the entire record, and having carefully considered the arguments of the parties, I will include the two dispatchers in the unit.

C. Placement of the Mechanics and Utility Agents

The Board noted recently that, "It is the Board's longstanding policy, as set forth in *American Cyanamid Co.*, 131 NLRB 909 (1961), to find separate maintenance department units appropriate when petitioned for where the facts of the case demonstrate the absence of a more comprehensive bargaining history and that the petitioned-for maintenance employees have the requisite community of interest." *Capri Sun, Inc.*, 330 NLRB 1124 (2000). The Board examines several factors to determine whether a sufficient separate community of interest exists among the maintenance employees, including "mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions, frequency of contact and interchange with other employees; and functional intergration." *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994), citing *Franklin Mint Corp.*, 254 NLRB 714, 716 (1981); *Capri Sun, Inc.*, *supra*.

Here, the mechanics and utility agents enjoy the same benefits as the other unit employees and are subject to the same policies; however the wage rates of the mechanics (and to a lesser degree the utility agents) are significantly above those of the other unit employees, and the mechanics are required to maintain a high skill level to

perform their duties. The “lead” mechanic, along with the “craftsman” mechanic attend periodic training programs in order to maintain their respective specialized certifications. Although the utility agents are only required to possess a “semi-skilled” level of ability, their work is related to, and their interests are closely aligned with, the mechanics inasmuch as they assist the mechanics and perform similar job functions. Although there is evidence of some movement from other job classifications to the utility agent, and even mechanic classification, there is rarely any interchange flowing the other direction.

The Board has focused on the skill level and the higher wages of maintenance employees as reason to find them eligible for a separate unit. Moreover, as noted above, the unit sought by the petitioning labor organization is always a relevant consideration and it need not seek representation in the most comprehensive grouping or most appropriate unit. Applying the rationale in *Capri Sun*, supra, and *Overnite Transportation Co.*, 322 NLRB 347, to the subject case, I conclude that the mechanics and utility agents constitute a distinct and cohesive grouping of employees sufficient to form a separate unit. In arriving at this conclusion, I have carefully considered the cases cited by the Employer and the arguments in its brief. In reaching its finding in *C. M. Carpenter d/b/a Carpenter Trucking*, 266 NLRB 907 (1983), that mechanics should be included in a unit with all drivers, the Board relied heavily on the fact that the drivers assisted the mechanics in their work, including pulling engines out of trucks, and that while performing these tasks, they used mechanics tools. In the instant case there is no evidence in the record that unit employees assist the mechanics and utility agents in the performance of their duties. Accordingly, I find the instant case distinguishable from *Carpenter Trucking* and I will exclude the mechanics and utility agents from the unit found appropriate.

D. Exclusions From the Unit

The parties agree, the record shows, and I find that the following persons are managerial and/or supervisors within the meaning of the Act and, therefore, I will exclude them from the unit found appropriate: Don Nystrom, city manager; Jim Trytek, maintenance manager; Steve DeCesare, airport manager A; Debbie Wells, airport manager B; Ron Cunningham, agency manager; Dave Hopkins, damage manager; Abdi Farah, Dan Eitle, and Ryan Harding, shift managers.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this manner and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time rental sales agents, customer service representatives, service agents, “on-lot” and “off-lot” shuttlers, lead employees, and dispatchers employed by the Employer at its Columbus, Ohio facilities located at the Columbus Airport, but excluding mechanics, utility agents, clerical employees and all guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above.^{5/} The employees will vote whether they wish to be represented for purposes of collective bargaining by **United Food & Commercial Workers Union, Local 1059, AFL-CIO-CLC**. The date, time, and place of the election will be specified in the notice of election that will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began

^{5/} In the event the Petitioner does not wish to proceed to an election in the enlarged unit, it may withdraw its petition without prejudice within 7 days of this Decision and Direction of Election.

more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **September 5, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **September 12, 2002**. The request may not be filed by facsimile.

Dated: August 29, 2002

/s/ Earl L. Ledford
Earl L. Ledford, Acting Regional Director
National Labor Relations Board
Region 9

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